UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DOREEN E. CHRISTIAN, individually and on behalf of all others similarly situated, Plaintiff, vs. AMERICAN STERLING BANK, and DOES 1 thorugh 10, inclusive, Defendants.	CASE NO. 08cv0090-LAB (RBB) **ORDER ON JOINT MOTION TO SET ASIDE DEFAULT AND DEFENDANT'S TIME TO SERVE ANSWER AND AFFIRMATIVE DEFENSES**

Plaintiff Doreen E. Christian and Defendant American Sterling Bank ("Defendant") have jointly moved the court to set aside the default entered May 19, 2008 in this putative class action alleging violations of federal truth in lending laws in the issuance of residential mortgages. Plaintiff filed a First Amended Complaint on February 29, 2008, before Defendant had responded to the January 15, 2008 Complaint initiating this action. The parties jointly propose Defendant be given 20 days "to answer and plead affirmative defenses from the date of service by Plaintiff of either an Amendment to the First Amended Class Action Complaint or of a Second Amended Class Action Complaint." Dkt No. 18.

Pursuant to FED.R.CIV.P. ("Rule") 15(a)(1)(A), a party may amend its pleading once as a matter of course before being served with a responsive pleading, as has occurred in this case. A party may amend its pleading thereafter only "with the opposing party's written consent or the court's leave." Rule 15(a)(2). "The court should freely give leave when justice so requires." Id. The court construes the parties' Joint Motion to set aside the default and for a briefing schedule as "the opposing party's written consent" to permit plaintiff to amend her First Amended Complaint ("FAC"), and **GRANTS** the Joint Motion.

However, the parties propose plaintiff will file "either an Amendment to the First Amended Class Action Complaint or . . . a Second Amended Class Action Complaint," but propose no time limit by which such amendment shall be filed. The Local Rules of this district provide "every pleading to which an amendment is permitted as of right or has been allowed by court order, shall be retyped and filed so that it is complete in itself without reference to the superseded pleading," unless prior approval is obtained from the court. Civ. L. R. 15.1. Inasmuch as the parties do not describe the nature of any "amendment" to the FAC, the court declines to authorize plaintiff to file any amendment other than a self-contained and completely superseding Second Amended Complaint.

In addition, the parties provide no time frame within which the new pleading will be filed to trigger Defendant's 20-day response period. Inasmuch as this case was initiated more than six months ago, and no appearance by the Defendant has yet occurred other than through the presentation of the parties' Joint Motion to set aside the default, the court hereby orders Plaintiff shall file her Second Amended Complaint on or before ***August 8, 2008***, with Defendant to answer within 20 days of service of the Second Amended Complaint.

Finally, no counsel of record for Defendant has formally appeared in this action. The court gleans from the Joint Motion counsel of record for Defendant will be attorney James Goldberg, Esq. of Bryan Cave LLP. The Clerk of Court shall ensure a copy of this Order is promptly forwarded to defense counsel at the address provided in Docket No. 18.

IT IS SO ORDERED.

DATED: July 25, 2008

Larry A. Burns

HONORABLE LARRY ALAN BURNS
United States District Judge